

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP
2049 Century Park East, Suite 2600
Los Angeles, California 90067

1 PIERCE O'DONNELL (SBN 081298)
PODonnell@ggfirm.com
2 TIMOTHY J. TOOHEY (SBN 140117)
TToohey@ggfirm.com
3 PAUL A. BLECHNER (SBN 159514)
PBlechner@ggfirm.com
4 GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP
5 2049 Century Park East, Suite 2600
Los Angeles, California 90067
6 Telephone: 310.553.3610
Fax: 310.553.0687

7 Attorneys for Plaintiff
8 MICHAEL TERPIN

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 MICHAEL TERPIN,
14 Plaintiff,
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16 v.
17 AT&T MOBILITY, LLC; and
DOES 1-25,
18 Defendants.
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Case No. 2:18-cv-06975-ODW-KS

[Assigned to The Hon. Otis D. Wright II]

**REVISED DECLARATION OF
TIMOTHY J. TOOHEY IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO AT&T'S MOTION
FOR SUMMARY JUDGMENT [Local
Rule 79-5.2.2(b)]**

***CERTAIN EXHIBITS HEREWITH
FILED UNDER SEAL PURSUANT
TO COURT'S FEBRUARY 23, 2023
ORDER [DKT 215]***

Hearing Date: March 27, 2023
Hearing Time: 1:30 p.m.
Pretrial Conference: April 10, 2023
Trial: May 2, 2023

DECLARATION OF TIMOTHY J. TOOHEY

I, Timothy J. Toohey, declare as follows

1. I am an attorney duly licensed to practice in all state and federal courts of the State of California and am a partner of Greenberg Glusker Fields Claman & Machtinger LLP, attorneys of record for Plaintiff Michael Terpin. The facts set forth herein are of my own personal knowledge. If called as a witness, I could and would testify to these facts under oath.

2. I make this revised declaration in support of the Opposition of Michael Terpin to the Motion for Summary Judgment of Defendant AT&T Mobility, LLC ("AT&T"). In this declaration I reference deposition excerpts and documents that are attached hereto in support of Plaintiff's Opposition to AT&T's motion. This declaration has been revised to reflect the Court's ruling on the applications to seal portions of these documents and testimony on February 24, 2023. [Dkt. 215]

3. Attached hereto as Exhibit 1 are true and correct copies of excerpts from the deposition of Peter Coulter, who testified on behalf of AT&T on January 11, 2023.

4. Attached hereto as Exhibit 2 are true and correct copies of excerpts from the AT&T Mobility Deposition (30(b)(6)) on select issues with Designee Ray Hill who testified on December 8, 2022. The Court has ruled that the excerpts listed on pages 22-23, 25-27 and 31 of the attachments to my prior declaration may be filed under seal.

5. Attached hereto as Exhibit 3 are true and correct copies of excerpts from the deposition of Maxine Hopkinson, who testified on behalf of Plaintiff on September 15, 2022.

6. Attached hereto as Exhibit 4 are true and correct copies of excerpts from the Rule 30(b)(6) deposition of Prime Communications with designee Amy Milberger who testified, on February 2 and 3, 2023.

7. Attached hereto as Exhibit 5 are true and correct copies of excerpts from the AT&T Mobility Deposition (30(b)(6)) on select issues with Designee Joseph Morella who testified on January 12, 2023. The Court has ruled that the excerpts listed on pages 68-81 and 84-92 of the attachments to my prior declaration may be filed under seal.

8. Attached hereto as Exhibit 6 are true and correct copies of excerpts from the deposition of third party Ellis Pinsky, who testified on November 18, 2022.

9. Attached hereto as Exhibit 7 is a true and correct copy of Deposition Exhibit (“Dep. Exh.”) 25 (“What You Need to Know about SIM Swap Scans” by Brian Rexroad, AT&T) for the AT&T Cyber Aware blog.

10. Attached hereto as Exhibit 8 is a true and correct copy of Dep. Exh. 26 (June 7, 2016 FTC blog posting, “Your mobile phone account could be hijacked by an identity theft”).

11. Attached hereto as Exhibit 9 is a true and correct copy of Dep. Exh. 27 (January 21, 2016 e-mail from Bob Diana to Peter Coulter *et al.*) The Court has ruled that this document may be filed under seal.

12. Attached hereto as Exhibit 10 is a true and correct copy of Dep. Exh. 28, which is a website posting from New York State Division of Consumer Protection titled “AT&T SIM-card Switch Scam”.

13. Attached hereto as Exhibit 11 is a true and correct copy of Dep. Exh. 40 (N. Popper “Identity Thieves Hijack Cellphone Accounts to Go After Virtual Currency”, *New York Times*, August 21, 2017).

14. Attached hereto as Exhibit 12 is a true and correct copy of Dep. Exh. 43, which is an article by L. Shin, “*Hackers Have Stolen Millions of Dollars in Bitcoin—Using Only Phone Numbers*”, *Forbes*, December 12, 2016.

15. Attached hereto as Exhibit 13 is a true and correct copy of Dep. Exh. 46 (December 13, 2017 e-mail from Peter Coulter to Cynthia Cama *et al.*) The Court has ruled that this document may be filed under seal.

16. [Exhibit 14 intentionally omitted.]

17. Attached hereto as Exhibit 15 is a true and correct copy of Dep. Exh. 47 (authentication program starting point ideas v. 2). The Court has ruled that this document may be filed under seal.

18. Attached hereto as Exhibit 16 is a true and correct copy of Dep. Exh. 63 (May 27, 2016 e-mail from Chris Bader to Peter Coulter). The Court has ruled that this document may be filed under seal.

19. Attached hereto as Exhibit 17 is a true and correct copy of Dep. Exh. 65 (July 26, 2017 e-mail from Bob Diana to Frederick J. Devereux *et al.*) The Court has ruled that this document may be filed under seal.

20. Attached hereto as Exhibit 18 is a true and correct copy of Dep. Exh. 68, which is the AT&T Privacy Policy attached as Exhibit B to Plaintiff's Second Amended Complaint ("SAC") in this action.

21. Attached hereto as Exhibit 19 is a true and correct copy of Dep. Exh. 73 (April 2018 Fraud Prevention Executive Steering Committee). The Court has ruled that this document may be filed under seal.

22. Attached hereto as Exhibit 20 is a true and correct copy of Dep. Exh. 86 (January 11, 2018 e-mail from Joan Masters to Alexander Berry *et al.* regarding "personal account fraud" referencing SIM swap that led to loss of access to an account). The Court has ruled that this document may be filed under seal..

23. Attached hereto as Exhibit 21 is a true and correct copy of Dep. Exh. 87 (AT&T Notes for Terpin account ("Account Notes")). The Court has ruled that this document may be filed under seal.

1 24. Attached hereto as Exhibit 22 is a true and correct copy of portions of
2 Dep. Exh. 91 (call detail for Terpin account for January 7, 2018-January 8, 2018).
3 The Court has ruled that this document may be filed under seal.

4 25. Attached hereto as Exhibit 23 is a true and correct copy of Dep. Exh.
5 109 (showing transfers of certain Triggers stolen from Mr. Terpin).

6 26. Attached hereto as Exhibit 24 is a true and correct copy of Dep. Exh.
7 110 (password reset e-mail from Microsoft). The Court has ruled that this document
8 may be filed with certain redactions.

9 27. Attached hereto as Exhibit 25 is a true and correct copy of Dep. Exh.
10 111 (password reset email from Dropbox). The Court has ruled that this document
11 may be filed with certain redactions.

12 28. Attached hereto as Exhibit 26 is a true and correct copy of Dep. Exh.
13 124 (March 27, 2017 e-mail from Tony Le to Peter Coulter re “SIM Swaps”). The
14 Court has ruled that this document may be filed under seal.

15 29. Attached hereto as Exhibit 27 is a true and correct copy of Dep. Exh.
16 125 (August 16, 2017 “MyCSP Article—Fraud and Social Engineering”).

17 30. Attached hereto as Exhibit 28 is a true and correct copy of Dep. Exh.
18 128 (October 3, 2017 e-mail from Peer Coulter to Kent Mader). The Court has
19 ruled that this document may be filed under seal.

20 31. Attached hereto as Exhibit 29 is a true and correct copy of Dep. Exh.
21 129 (“Fraud Mitigation Strategies”). The Court has ruled that this document may
22 be filed under seal.

23 32. Attached hereto as Exhibit 30 is a true and correct copy of Dep. Exh.
24 130) (July 2017 End-to End Monthly Fraud Review). The Court has ruled that this
25 document may be filed under seal.

26 33. Attached hereto as Exhibit 31 is a true and correct copy of Dep. Exh.
27 145 which is an attachment to an interrogatory response by AT&T regarding SIM
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1 swaps performed by Jahmil Smith. The Court has ruled that this document may be
2 filed under seal.

3 34. Attached hereto as Exhibit 32 is a true and correct copy of Dep. Exh.
4 146 (regarding select SIM swaps performed by Jahmil Smith). The Court has ruled
5 that this document may be filed under seal.

6 35. Attached hereto as Exhibit 33 is a true and correct copy of Dep. Exh.
7 152 (spreadsheet regarding SIM changes). The Court has ruled that this document
8 may be filed under seal.

9 36. Attached hereto as Exhibit 34 is a true and correct copy of Dep. Exh.
10 159 (May 4, 2017 e-mail from Joseph Morella to Ana M. Friedrichs re “Q
11 Message”). The Court has ruled that this document may be filed under seal.

12 37. Attached as Exhibit 35 is a true and correct copy of Dep. Exh, 160
13 (March 29, 2018 e-mail from Patrick McCreary to Buck Carter *et al.*, cc: Joseph
14 Morella, re SIM Swap Alert-My CSP). The Court has ruled that this document may
15 be filed under seal.

16 38. Attached as Exhibit 36 is a true and correct copy of Dep. Exh. 161
17 (September 28, 2017 article “SIM Swap Scams Targeting Cryptocurrency
18 Investors”).

19 39. Attached as Exhibit 37 is a true and correct copy of Dep. Exh. 167
20 (April 2018 email chain regarding hours worked at the Norwich store on January 7,
21 2018).

22 40. Attached as Exhibit 38 is a true and correct copy of Dep. Exh. 168 (an
23 invoice report showing certain activity at the Norwich store on January 7 & 8,
24 2018).

25 41. Attached as Exhibit 39 is a true and correct copy of Dep. Exh. 174
26 which is a report from the Norwich, Connecticut Police Department regarding an
27 incident on January 1, 2018.
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42. Attached as Exhibit 40 is a true and correct copy of Dep. Exh. 175 which is an April 2, 2018 letter from an assistant district attorney of the State of Connecticut.

43. Attached as Exhibit 41 are the Supplemental Responses of Michael Terpin to AT&T Interrogatories 1-3, 5, 10, 15, 16 and 18.

44. Attached as Exhibit 42 is a true and correct copy of AT&T's Supplemental Response to Plaintiff's interrogatory no. 19.

45. Attached as Exhibit 43 is a true and correct copy of 30 FCC Rcd 2808 *In the Matter of AT&T Services Inc.* (attached as Exhibit A to the Plaintiff's Second Amended Complaint).

46. Attached as Exhibit 44 is a true and correct copy of the AT&T Code of Business Counsel attached as Exhibit C to Plaintiff's Second Amended Complaint.

47. Attached as Exhibit 45 is a true and correct copy of *In the Matter of the Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, FCC 07-22, April 2, 2007, CC Docket No. 96-115.

48. Attached as Exhibit 46 is a true and correct copy of a portion of the website of the Federal Communications Commission, <https://www.fcc.gov/enforcement/areas/privacy>.

49. Attached as Exhibit 47 is a true and correct copy of *In the Matter of Cox Communications, Inc.*, 30 FCC Rcd. 12302, 12307 (2015).

50. Attached as Exhibit 48 is a true and correct copy of the Federal Communications Commission's Notice of Proposed Rulemaking, *In the Matter of Protecting Consumers from SIM Swap and Port-Out Fraud*, WC Docket No. 21-341 (September 30, 2021) <https://www.fcc.gov/document/fcc-proposes-rules-prevent-sim-swapping-and-port-out-fraud>.

1 51. Attached as Exhibit 49 is a true and correct copy of an article in The
2 Verge, [https://www.theverge.com/2017/11/29/16711304/bitcoin-price-10000-](https://www.theverge.com/2017/11/29/16711304/bitcoin-price-10000-cryptocurrency-regulation-finance)
3 [cryptocurrency-regulation-finance](https://www.theverge.com/2017/11/29/16711304/bitcoin-price-10000-cryptocurrency-regulation-finance).

4 52. Attached as Exhibit 50 is a true and correct copy of an article in at
5 globaldata.com, [https://www.globaldata.com/data-insights/financial-](https://www.globaldata.com/data-insights/financial-services/bitcoins-market-capitalization-history/#:~:text=It%20took%20bitcoin%20nearly%20nine,capitalization%20on%20October%2021%2C%202017)
6 [services/bitcoins-market-capitalization-](https://www.globaldata.com/data-insights/financial-services/bitcoins-market-capitalization-history/#:~:text=It%20took%20bitcoin%20nearly%20nine,capitalization%20on%20October%2021%2C%202017)
7 [history/#:~:text=It%20took%20bitcoin%20nearly%20nine,capitalization%20on%2](https://www.globaldata.com/data-insights/financial-services/bitcoins-market-capitalization-history/#:~:text=It%20took%20bitcoin%20nearly%20nine,capitalization%20on%20October%2021%2C%202017)
8 [0October%2021%2C%202017](https://www.globaldata.com/data-insights/financial-services/bitcoins-market-capitalization-history/#:~:text=It%20took%20bitcoin%20nearly%20nine,capitalization%20on%20October%2021%2C%202017).

9 I swear under penalty of perjury under the laws of the United States of
10 America that the foregoing is true and correct to the best of my knowledge.

11 Executed this Sixth Day of March 2023 in Los Angeles, California.

12
13 By: 
14 TIMOTHY TOOHEY (SBN 140117)
15 Attorneys for Plaintiff Michael Terpin
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& MACHTINGER LLP
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